

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1542 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DINESHBHAI SOMABHAI PATEL

Versus

I G PRISONRS

Appearance:

MR MC KAPADIA for Petitioner

MR NIGAM SHUKLA, ADDL.PUBLIC PROSECUTOR for
Respondents

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 24/04/96

ORAL JUDGEMENT

Rule. Learned Government Counsel Mr. Nigam
Shukla waives the service of Rule for the respondents.

The present petition, upon a conjoint reading of
the provisions contained under Section 32-A of the
Narcotic Drugs and Psychotropic Substances Act, 1985

(hereinafter referred to as 'NDPS Act') and the Supreme Court pronouncement in the case of MARU RAM vs. UNION OF INDIA, AIR 1980, S.C. 2147, requires a complete recognition.

The undisputed facts are that, the petitioner Dineshbhai Patel, the prisoner, lodged at Central Jail, Sabarmati, Ahmedabad, came to be convicted for the offences punishable under NDPS Act, 1985 vide orders of conviction dated September 23, 1988. According to him, he is entitled to all the remissions which he has earned and that, if that is taken into consideration, the sentence awarded to him has become over and he should be out of the prison. This view being repeatedly canvassed by the petitioner is not being countenanced by the respondents, placing absolutely false reliance upon the provisions contained under Section 32-A of the NDPS Act, 1985. The say of the respondents appears to be that, under the said provisions of the Act, no sentence awarded under the Act can be suspended or remitted or commuted.

Section 32-A which came to be inserted by Act no.2 of 1989 with effect from May 29, 1989 runs thus:

"32-A: No suspension, remission or commutation in any sentence awarded under this Act. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted."

It is eloquently clear that Section starts with a non-obstantate clause and says that, no sentence awarded under the NDPS Act, shall be suspended or remitted or commuted. The question which precisely arises for the consideration and the decision is as to whether the provisions contained under Section 32-A of the Act would be attracted in case of a person who has been convicted before Section 32-A came on the Statute Book under the amending Act of 1989 with effect from May 19, 1989. It is not in dispute that, the prisoner came to be convicted vide the judgment and order dated September 23, 1989. It is, therefore, abundantly clear that the prisoner came to be convicted for the offences under NDPS Act, 1985 before the incorporation of the provisions of Section 32-A of the Act of 1989.

There was an endeavour on the part of learned Government Counsel Mr.Nigam Shukla to urge that, looking

to the all pervasive provisions under Section 32-A of the NDPS Act, 1985, the prisoner would not be entitled to any remission whatsoever, which would otherwise be available to him under the Jail rules. This contention cannot be accepted.

The language employed, while drafting the provisions under Section 32-A of the NDPS Act, 1985, does not say that the above said provisions are retrospective or retroactive in operation. If the Legislature wanted to say that these provisions which run counter to the right of an early release of the prisoners, are to be retrospective or retroactive in operation, the Legislature in their great wisdom could have said so under express language. A part of criminal Statute which either provides punishment or puts a bar on the early release of a prisoner cannot be accepted to be retrospective in operation in absence of express mandate. The provisions must be express in letter and spirit. This not being so, it cannot be urged that Section 32-A of the Act of 1985 is retrospective or retroactive in operation. Even if the principle of necessary implication is accepted for a moment and one has to fall back upon the exercise of the interpretation of Statute on the basis of implied intention or necessary implication, then also, in whole of the Act, there is nothing which would be suggestive of an intention on the part of the Legislature that the provisions contained under Section 32-A of the NDPS Act, 1985 should be retrospective or retroactive in operation. The conclusion therefore, would be that, neither expressly nor by necessary implication, the said provisions could be said to be retrospective or retroactive in operation.

Learned Counsel Mr.Kapadia who appears on behalf of the petitioner-prisoner places reliance upon the Supreme Court Pronouncement in the case of MARU RAM (supra). The emphasis is being placed by the learned Counsel on the clear mandate emerging from paragraph 55 of the said Pronouncement. The Supreme Court was, in that case, concerned with the provisions contained under Section 433-A of the Code of Criminal Procedure, 1973. The question was, as to whether these provisions would be affecting the persons who are convicted before the above said provisions came under the Statute Book. The clear answer provided by the Supreme Court is, of course, in the negative. It has been pointed out that, the sound rationale is that the expectations of convicted citizens of regaining freedom on existing legal practices should not be frustrated by subsequent legislation or practice unless the language is beyond doubt. The reproduction of

the text of Section 32-A of the NDPS Act, 1985 goes to show very clearly that, no such intention is expressed in the said provisions under express language. In the same way, such an intention on the part of the Legislature cannot be inferred or assumed. The same cannot be read by invoking the principle of necessary implication.

Thus, it appears that the stand taken by the respondents is absolutely illegal and unsustainable at law.

The petition, therefore, requires a recognition. The same is hereby allowed. The petitioner-prisoner shall be entitled to be out of the prison upon the completion of his sentence awarded by the Court to him. While calculating the period, the remissions, commutations and other benefits which he has earned shall have to be taken into consideration and his claim cannot be discarded on the basis that, now, under Section 32-A of the NDPS Act, 1985, there is a bar on such exercise. The respondents-authorities are hereby ordered and directed to work out the details in this respect and to release the prisoner as soon as his sentence becomes over, regard being had to the remissions etc. earned by him. The respondents are directed to complete this exercise as early as possible and within a period of two weeks hereof and to report the compliance to this Court, under a sealed cover. The prisoner shall be released as indicated above, unless he is required in any other criminal case or proceedings. Rule is made absolute accordingly. Direct service is permitted.

Learned Counsel Mr. Kapadia, at this juncture, points out that, according to the calculation made by him and the prisoner, the prisoner is entitled to the remission of 1189 days. The authorities shall take the said calculation into consideration, while deciding the above said question.

There comes one more plea from the learned Counsel for the prisoner. Mr. Kapadia pleads that for the benefit of other similarly situated prisoners, it should be made clear that all what I have said hereinabove, is by way of a principle, upon the interpretation of the relevant provisions of the Statute, i.e. Section 32-A of the NDPS Act, 1985, and the exercise done is in the field of Interpretation of Statute and that these Orders of mine should not be characterised as having been based upon the facts of the case on hand. I have indeed and precisely done the same, and if there appears to be any need to say so, I do say so.
